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Electronically filed on: 10/29/09

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7 UNITED STATES BANKRUPTCY COURT
8 DISTRICT OF NEVADA

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10 IN RE:)
11 SHELLEY D. CAILLIER,) Case No. BK-S-09-24073-BAM
Chapter 13
12)
13 Debtors.) **Date of Hearing: November 3, 2009**
Time of Hearing: 1:30 p.m.
14)

15 **OPPOSITION TO MOTION FOR RELIEF FROM AUTOMATIC STAY**

16 COMES NOW, Debtor, SHELLEY D. CAILLIER, by and through her attorneys, ROGER
17 CROTEAU & ASSOCIATES, and respectfully requests that this Court deny the Motion for
18 Relief From Automatic Stay filed by Creditor, AMERICA'S SERVICING COMPANY, by and
19 through its attorney, WILDE & ASSOCIATES. This Opposition is made and based upon the
20 attached memorandum of points and authorities, all papers and pleadings on file herein and any
21 oral argument that this court may entertain at the hearing of this matter.

22 DATED this 29th day of October, 2009.

23 ROGER P. CROTEAU & ASSOCIATES, LTD.

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25 /s/ TIMOTHY E. RHODA
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26 720 South Fourth Street, Suite 202
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POINTS AND AUTHORITIES

STATEMENT OF FACT

1. The Debtor filed the instant Chapter 13 petition in good faith on August 3, 2009.
2. Debtor is the owner of a residence located at 3155 Cardinal Lane, Las Vegas, Nevada 89121 (*the "Property"*).
3. The Property was valued at approximately \$188,496.00 at the time of filing of the Debtors' bankruptcy petition.
4. The Property secures a First Deed of Trust in favor of Movant in the amount of approximately \$268,000.00.
5. The Property also secures a Second Deed of Trust which the Debtor intends to strip as an unsecured debt.
6. Debtor has made all payments associated with the first mortgage held by the Movant both prior to and since the date of filing of the petition and intends to retain the Property.
7. The Debtor's Chapter 13 plan proposes to continue to pay post-petition payments to the Movant as a direct payment.
8. The Debtor's home is necessary for an effective reorganization.

LEGAL ARGUMENT

11 USC Section (d) (1) states that the court may terminate, modify or condition stay "for cause, including the lack of adequate protection of an interest in property of such party in interest;—"

...

11 USC Section 362 (d) (2) the Court may terminate, modify or condition a stay "with respect to a stay of an act against property under subsection (a) of this section, if -

(A) the debtor does not have an equity in such property AND

(B) such property is not necessary to an effective reorganization

In this particular case, the Property is necessary for an effective reorganization. Contrary to the assertions set forth in the Movant's Motion, the Debtor has not stated an intention to

1 surrender the Property. While the Debtor does intend to surrender a second property located at
2 472 Las Casitas Way, Las Vegas, Nevada, she has no intention of surrendering the Property,
3 which is her residence. In fact, the Debtor is not delinquent with respect to either her pre-petition
4 or post-petition payments.

5 Based upon the foregoing, there exists no good cause to lift the automatic stay. The
6 Debtor is not in breach of her obligations to the lender and intends to continue to make payments
7 pursuant to her first mortgage.

8 **CONCLUSION**

9 Based upon the foregoing, Debtor respectfully requests that the instant motion be denied
10 in its entirety and that any action on creditor's behalf be stayed.

11 DATED this 23rd day of October, 2009.

12 ROGER P. CROTEAU & ASSOCIATES, LTD.

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14 /s/ TIMOTHY E. RHODA
15 TIMOTHY E. RHODA, ESQ.
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20 ***Attorneys for Debtor***
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CERTIFICATE OF MAILING

I, the undersigned, an employee of the ROGER CROTEAU & ASSOCIATES, hereby
certify that on the 29th day of October, 2009, I deposited in the United States Mail, first
class mail, postage pre-paid, a true and correct copy of the **OPPOSITION TO MOTION FOR**
RELIEF FROM AUTOMATIC STAY to all parties listed below:

Kathleen A. Leavitt
201 Las Vegas Blvd South #200
Las Vegas, NV 89101

Shelley Caillier
3155 Cardinal Lane
Las Vegas, NV 89121

Wilde & Associates
208 South Jones Blvd
Las Vegas, NV 89107

/s/ PAM COLBERT
An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD.